

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OTTO DELCID, LUZ ROMAN, MINA
KALLAMNI, MARY MOLINA, CARLO
GARCIA, and ANDREA FAHEY on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

TCP HOT ACQUISITION LLC and IDELLE
LABS, LTD,

Defendants.

Case No. 1:21-cv-09569-DLC

Hon. Denise L. Cote

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF RIDER
TO CLASS ACTION SETTLEMENT
AGREEMENT**

PLEASE TAKE NOTICE that on a date and time to be determined by the Court, Plaintiffs will move the Court pursuant to Federal Rule of Civil Procedure 23(e) and upon the accompanying Declaration of Jason P. Sultzer, Esq., for an Order: 1) preliminarily approving this rider to the previously preliminarily approved Settlement Agreement nunc pro tunc; 2) granting approval of the revised Long Form Notice and Short Form Notice nunc pro tunc; and 3) fully incorporating this approval to the previously issued Preliminary Approval Order nunc pro tunc.

By way of background, Plaintiffs Otto Delcid, Luz Roman, Mina Kallamni, Mary Molina, Carlo Garcia, and Andrea Fahey (together “Plaintiffs”) and Defendants TCP Hot Acquisition LLC and Idelle Labs, Ltd. (together “Defendants”) entered into a Settlement Agreement fully executed on October 14, 2022. Plaintiffs moved this Court for preliminary approval of the Settlement Agreement, certification of the Settlement Class, and approval of the Notice Plan on October 20, 2022 (ECF Nos. 64-66) which attached the executed Settlement Agreement with exhibits (ECF

No. 66-1). This Court issued its Preliminary Approval Order granting Plaintiffs' motion on October 28, 2022 (ECF No. 68).

Recently Counsel learned that one Brut aerosolized deodorant product had been included in Defendants' voluntary recall of certain spray antiperspirant and deodorant products was inadvertently not included in the Settlement Agreement. Individuals who submitted for a refund for that product through the voluntary recall, however, received direct email notice of the Settlement. The Parties agreed that that Brut deodorant product should be added to the Settlement Agreement.

On December 2, 2022, the Parties executed a Rider to the Settlement Agreement ("Rider") for the sole purpose of adding one product, Brut Classic Deodorant Aerosol (10 oz) (UPC 00827755070047) to the definition of "Covered Products." The Rider also attached amended notices with the sole change being the addition of the one product and amends the class definition in the operative complaint to conform to the Settlement Class definition.

The Notice Plan outlined in the Settlement Agreement went into effect on November 28, 2022. On that date, the Settlement Website became active and email notice was sent to those Settlement Class Members for whom email addresses were known. In addition, the digital/internet publication designed to target purchasers of the Covered Products also went into effect. Upon court approval of the Rider and the revised notices, the Claim Administrator will re-issue notice via email to those individuals for whom email addresses are known and will post the Rider, revised notices, and the order on this motion on the Settlement Website. The digital/internet publication will continue and direct class members to the Settlement Website which will contain the amended notices and information about the Covered Products including the added product. The Parties do not believe any further action or extension of deadlines is needed.

Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Rider with exhibits nunc pro tunc and deem it fully incorporated into the Settlement Agreement.

Dated: December 2, 2022

Respectfully submitted,

By: /s/ Jason P. Sultzer

Jason P. Sultzer

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***Pro Hac Vice* Application Forthcoming

Attorneys for Plaintiffs and the Settlement Class